

STATEMENT OF EMERGENCY

806 KAR 18:090E

This emergency administrative regulation is necessary to provide an extended election period for continuation of a group policy under state law in accordance with the American Recovery and Reinvestment Act of 2009. The federal law affords an extended opportunity for certain individuals, whose employment has been involuntarily terminated from September 1, 2008 through February 17, 2009, to elect continuation coverage and, in doing so, be eligible for premium assistance through the federal government. The extended election period began on February 17, 2009, and ends sixty (60) days after the plan administrator provides a required notice. Plan administrators are required to provide the required notice within sixty (60) days from February 17, 2009 (or April 18, 2009.) The United States Department of Labor has stated that the premium assistance provisions will extend to individuals covered under state continuation coverage. However, the extended election period will not apply to individuals eligible for state continuation coverage unless states act to extend that election period. Therefore, due to the short federal deadline for providing notice of the extended election for continuation coverage and subsequently electing continuation coverage, it is necessary to implement these state requirements immediately.

This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because the extended election period afforded under this emergency administrative regulation will expire June 17, 2009.

Steven L. Beshear, Governor

Date

Robert D. Vance, Secretary
Public Protection Cabinet

Date

Sharon P. Clark, Commissioner
Department of Insurance

Date

1 PUBLIC PROTECTION CABINET

2 Department of Insurance

3 Health Insurance Policy and Managed Care Division

4 (Emergency Administrative Regulation)

5 806 KAR 18:090E. Notice of Extension of Election Period for Continuation of a Group Policy.

6 RELATES TO: KRS 304.18-110, Pub. L. no. 111-5, February 17, 2009, 123 Stat. 115

7 STATUTORY AUTHORITY: KRS 304.2-110

8 NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008,
9 and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner
10 of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate
11 administrative regulations necessary for, or as an aid to the effectuation of, any provision of the
12 Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation
13 establishes an extension of the election period for a continued group policy for persons eligible
14 for premium assistance under the American Recovery and Reinvestment Act of 2009, Pub. L.
15 111-5, 123 Stat. 115.

16 Section 1. Definitions.

17 (1) “Group policy” is defined in KRS 304.18-110(1)(a).

18 (2) “Qualified beneficiary” means a person who:

19 (a) Is entitled to continue a group policy pursuant to KRS 304.18-110(2) due to
20 involuntary termination of the group member’s employment between September
21 1, 2008 and February 17, 2009; and

1 (b) Did not have a continued group policy in effect on February 17, 2009.

2 Section 2. (1) An insurer shall provide notice of the right to continue a group policy to a
3 qualified beneficiary in accordance with Pub. L. 111-5, sec. 3001(a)(7).

4 (2) A qualified beneficiary shall:

5 (a) Have the right to continue a group policy in accordance with Pub. L. 111-5, sec.
6 3001(a)(4); and

7 (b) If desired, make an election to continue a group policy in accordance with KRS
8 304.18-110(2)(b).

APPROVED:

Sharon P. Clark, Commissioner
Kentucky Department of Insurance

Date

APPROVED:

Robert D. Vance, Secretary
Public Protection Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: DJ Wasson, Staff Assistant
Kentucky Department of Insurance
PO Box 517
Frankfort, Kentucky 40602
Phone: (502) 564-0888
Fax: (502) 564-1453

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a special election period for individuals entitled to state continuation coverage from September 1, 2008 through February 17, 2009, that mirrors the special election period for COBRA continuation coverage under the American Recovery and Reinvestment Act of 2009.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to afford certain Kentuckians who are not eligible for COBRA continuation coverage an opportunity for a special election period for state continuation coverage for the purpose of obtaining the premium assistance given under the American Recovery and Reinvestment Act of 2009.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation clarifies the right to continue a group health insurance policy in accordance with KRS 304.18-110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow individuals involuntarily terminated from their employment from September 1, 2008 through February 17, 2009, another opportunity to elect a continued group health insurance policy. If elected, the individual will be

eligible for premium assistance in accordance with the American Recovery and Reinvestment Act of 2009.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 860 insurance companies that hold a certificate of authority in Kentucky to offer health insurance in Kentucky. This regulation will also impact an unknown number of individuals who will be afforded another opportunity to elect continuation of their group health policy.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers will be required to

send a notice to individuals who were entitled to continue their group health insurance policy and whose employment involuntarily terminated between September 1, 2008 and February 17, 2009, of the right to elect continuation of their group health insurance policy in accordance with the requirements for notice of the special election period for COBRA continuation coverage in the American Recovery and Reinvestment Act of 2009.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In that the number of individuals who will receive a notice is undetermined at this time, the cost of mailing the notices required by this administrative regulation is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, certain Kentuckians will be able to take advantage of the federal premium assistance available to those insured through COBRA continuation coverage.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this regulation.

(b) On a continuing basis: There will not be a continued cost to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any specific fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied because this regulation applies equally to all insurers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.: 806 KAR 18:090E

Contact Person: D.J. Wasson

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will be revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will be revenue neutral.

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 806 KAR 18:090E

Contact Person: DJ Wasson

1. Federal statute or regulation constituting the federal mandate:

The federal statute requiring promulgation of this administrative regulation is Pub. L. 111-5, the American Recovery and Reinvestment Act of 2009

2. State compliance standards.

The federal American Recovery and Reinvestment Act of 2009 includes provisions allowing individuals involuntarily terminated from September 1, 2008 through February 17, 2009 who did not elect continuation coverage when it was first offered or who did elect continuation coverage but are no longer enrolled have a new election opportunity. The Centers for Medicare and Medicaid Services, the United States Department of Labor and the United States Treasury Department have taken the position that states must act to extend the election period to state continuation coverage. If individuals elect state continuation coverage under this extended election period, they will be eligible to receive premium assistance under the American Recovery and Reinvestment Act of 2009.

3. Minimum or uniform standards contained in the federal mandate.

Individuals who were entitled to continuation coverage due to involuntary termination of their employment from September 1, 2008 through February 17, 2009, who did not elect continuation coverage or who are no longer enrolled in continuation coverage, will have an extended opportunity to elect continuation coverage. The election period begins February 17, 2009 and ends sixty (60) days after the plan administrator provides notice of the extended election period.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation will not impose stricter requirements than those required by the federal mandate.